

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3691 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

NAVENDERABHAI FAGANMAL

Versus

STATE OF GUJARAT

Appearance:

MR KH PAREKH WITH MS MEGHA JANI for Petitioners

MR TRIVEDI, APP, for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 15/07/1999

ORAL JUDGEMENT

1. Heard Mr. K.H. Parekh for the petitioners and Mr. Trivedi, learned Additional Public Prosecutor for the respondents. Rule. Mr. Trivedi waives service of Rule.
2. Mr. Parekh has started with a submission that the impugned complaint is an outcome of the mistaken

impression of the provision of law as it existed then and, therefore, the petition.

3. The petition arises out of a complaint lodged by Food Inspector before the learned Chief Judicial Magistrate, Jamnagar, in Criminal Case No.2211 of 1999, against the petitioners, who are dealing in soup powder under the brand name "Knorr" manufactured by Corn Produces Company (India) Limited, Mumbai. On 10th April, 1997, the Food Inspector visited one shop Navendra Faganmal in presence of Jairambhai Devumal, collected samples of three tomato soup powder of "Knorr" brand after following due procedure as prescribed by law. The sample was sent to the Public Analyst and the Public Analyst gave a report to the effect that the sample contained synthetic colours not permissible under law and, therefore, the sample did not conform to the prescribed standards. After obtaining consent under Section 20, the complaint came to be lodged.

4. Mr. Parekh has taken this Court through the Prevention of Food Adulteration Rules 28 and 29. He submitted that, according to Rule 28, carmosine and sunset yellow are synthetic food colours which are permissible to be used. He has taken this Court through Rule 29 as it exists today which does not include in the list the soup powder. He has drawn attention of this Court to the earlier provision before amendment which was made in 1994 wherein soup powder was in the list but by the amendment in 1994 came to be deleted from the Rule. However, although the amendment was made in 1994, its implementation by publication in Gazette was deferred from time to time by issuance of notifications. He has shown various notifications to the Court to indicate that, ultimately, the amendment came into force from 1st January, 1998. Till then, the implementation period was extended from time to time by issuance of various notifications which can be enumerated as under :-

Date of notifi- cation	No. of notifi- cation	Provision permitted in soup powder.	Date till which use of synthe- tic colours
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6.9.94 GSR 677(E) The item of soup powder was 6.9.1995
intended to be deleted from
the list of food items in or

upon which synthetic food
colours could be used.
It was to come into effect
after one year from the date
of notification.

4.9.95 GSR 613(E) The words one year were sub-
stituted by the words two 6.6.1996
years and three months.

4.6.96 GSR 232(E) The words one year and nine 6.12.1996
months were substituted by
the words two years and
three months.

4.12.96 GSR 553(E) The words two years and 6.6.1997
three months were substi-
tuted by the words two
years and nine months.

4.6.97 GSR 304(E) Use of synthetic food 6.12.1997
colours was permitted in
soup powder for the period
upto and inclusive of
31.12.1997.

As a result, till 31.12.1997, synthetic colours
as enumerated in Rule 28 prior to amendment of 1994 were
permissible to be used in the product in question, viz.
soup powder.

5. Admittedly, the sample was drawn, in the instant
case, on 10th April, 1997 and, therefore, notification
No.GSR 553(E) dated 4th December, 1996 was in operation
which indicated that the implementation of the amendment
was extended upto 6.6.1997 which again came to be
extended upto 31.12.1997. Under the circumstances, the
complaint cannot be sustained. It seems the complaint is
lodged in ignorance of these notifications.

6. Mr. Trivedi has placed on record a communication
received by him from the Food Inspector. The Food
Inspector has enclosed a clarification from the Public
Analyst's office at Rajkot, who had issued an earlier
report in question which also conforms to the above
proposition. Under the circumstances, the complaint
deserves to be quashed by allowing the petition.

7. In the result, the petition is allowed. The

complaint being Criminal Case No.2211 of 1999 before the
Chief Judicial Magistrate, at Jamnagar, is hereby
quashed. Rule is made absolute.

[A.L. DAVE, J.]

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